

STATE OF MAINE

In the matter of

Prosper Marketplace, Inc.

Respondent.

No. 07-071

ADMINISTRATIVE CONSENT ORDER

WHEREAS, the Maine Office of Securities conducted an investigation of Prosper Marketplace, Inc. ("PROSPER") and determined that PROSPER has offered and sold securities as defined in Maine Uniform Securities Act, 32 M.R.S.A. §§ 16102 (26) and (28); and

WHEREAS, a number of state regulators coordinated investigations into PROSPER'S activities in connection with unregistered securities offered and sold between 2006 and October 2008; and

WHEREAS, PROSPER has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and halting further offers and sales until the securities are appropriately registered; and

WHEREAS, PROSPER, as part of this settlement agrees to appropriately register its securities with the State of Maine before making further offers or soliciting sales, and to make certain payments; and

WHEREAS, PROSPER neither admits nor denies the Findings of Fact and Conclusions of Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered securities through this Administrative Consent Order (the "Order") in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, PROSPER, as evidenced by the authorized signature on the consent to the Order below, admits the jurisdiction of Maine Office of Securities, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under 32 M.R.S.A. § 16609 with respect to this Order;

1 NOW, THEREFORE, the Securities Administrator, as administrator of the Maine Uniform
2 Securities Act, hereby enters this Order:

3 **FINDINGS OF FACT**

4 **Part 1: Respondent Licensing/Registration History**

5 1. PROSPER is a Delaware corporation (Delaware Division of Corporations #3943799) that
6 was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street,
7 22nd Floor, San Francisco, California 94104. PROSPER registered as a foreign business
8 corporation in Maine on October 6, 2005 (Charter No. 20060261 F). Since February 2006
9 PROSPER has held itself out, through its Internet website, www.prosper.com, as an online
10 marketplace for "person to person" lending.

11 2. PROSPER has been licensed as a California finance lender (license #605-3227) since
12 December 19, 2005 , and as a Supervised Lender by the State of Maine since February 28, 2006
13 (License No. SLM8388). Its supervised lender license allows PROSPER, pursuant to the Maine
14 Consumer Credit Code, to make loans to consumers within certain limits. A supervised lender
15 license does not authorize a licensee to sell securities to Maine residents.

16 3. PROSPER submitted an application to register securities in Maine on November 7, 2007.
17 As of the date of this order, PROSPER does not yet have an active securities registration in Maine.

18 **Part 2: Prosper Product Prior to October 16, 2008**

19 4. PROSPER'S lending platform functioned like a double-blind auction, connecting
20 individuals who wish to borrow money, or "borrowers," with individuals or institutions who wish
21 to commit to purchase loans extended to borrowers, referred to on the platform as "lenders."
22 Lenders and borrowers registered on the website and created PROSPER identities. They were
23 prohibited from disclosing their actual identities anywhere on the PROSPER website.

24 5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between \$1,000 and
25 \$25,000 by posting "listings" on the platform indicating the amount they wanted to borrow and the
26 maximum interest rate they were willing to pay. PROSPER assigned borrowers a credit grade

1 based on a commercial credit score obtained from a credit bureau, but PROSPER did not verify
2 personal information, such as employment and income.

3 6. Potential lenders bid on funding all or portions of loans at specified interest rates, which
4 were typically higher than rates available from depository accounts at financial institutions. Each
5 loan was usually funded with bids by multiple lenders. After an auction closed and a loan was fully
6 bid upon, the borrower received the requested loan with the interest rate set by Prosper and
7 determined by the auction bidding at the lowest rate acceptable to all winning bidders.

8 7. Individual lenders did not lend money directly to the borrower; rather, the borrower
9 received a loan from a bank with which PROSPER has contracted. (Prior to April of 2008, loans
10 were made directly by PROSPER.) The interests in that loan were then sold and assigned through
11 PROSPER to the lenders, with each lender receiving an individual non-recourse promissory note.

12 8. Since the inception of its platform in January 2006, PROSPER has initiated approximately
13 \$174 million in loans nationwide. PROSPER collected an origination fee from each borrower of
14 one to three percent of loan proceeds, and collected servicing fees from each lender from loan
15 payments at an annual rate of one percent of the outstanding principal balance of the notes.

16 9. PROSPER administered the collection of loan payments from the borrower and the
17 distribution of such payments to the lenders. PROSPER also initiated collection of past due loans
18 from borrowers and assigned delinquent loan accounts to collection agencies. Lenders and
19 borrowers were prohibited from transacting directly and were unable to learn each others' true
20 identities.

21 10. PROSPER voluntarily suspended all offers and sales of securities on October 16, 2008.

22 11. Three thousand six hundred and ninety (3,690) Maine residents have financed PROSPER
23 loans totaling more than \$ 271,780.

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26 **Part 3: Prosper's Omissions in Connection with Sales to Investors**

12. PROSPER provided information to lenders concerning the issues noted below, although it did not provide the information in the manner typically required of a securities registrant regarding: details of the company's business model; biographical information about the background and experience of PROSPER'S management; certain risk factors in connection with the purchase of a PROSPER facilitated note, including the fact that the notes were speculative investments; significant financial risks that investors may be subjected to when investing in the PROSPER notes that could result in a complete loss of their investment, such as the fact that borrowers may not fulfill their obligations to make payments for reasons of death or incapacity, bankruptcy, or inability to pay; information concerning status as a development stage company with a limited operating history; and the possibility that PROSPER could cease operations at any time due to the failure to raise additional capital, because of a lack of profitability, or because of regulatory concerns.

13. The PROSPER website, the company's exclusive mode of dissemination of information to prospective investors, did not contain financial statements for PROSPER, did not disclose that the notes were not registered with the Maine Office of Securities, and that PROSPER might have significant contingent liability for the offer and sale of unregistered securities.

CONCLUSIONS OF LAW

1. The “notes” sold by PROSPER to Maine residents are securities, as defined by the Maine Uniform Securities Act, 32 M.R.S.A. § 16102 (28).

2. PROSPER sold securities that were not registered with the Maine Office of Securities in violation of the Maine Uniform Securities Act.

3. In connection with the offer or sale of a security to Maine residents, PROSPER

1 either failed to include information or failed to describe in the manner typically required of a
2 securities registrant certain business or loan information including investment risk factors, that
3 would have aided investors, or prospective investors in making an objective decision on whether
4 to invest in the PROSPER notes in violation of Maine Uniform Securities Act, 32 M.R.S.A. §
5 16101 *et seq.*

6 ORDER

7 IT IS HEREBY ORDERED:

8 1. PROSPER will CEASE AND DESIST from offering and/or selling securities to persons in or
9 from the State of Maine in violation of the Maine Uniform Securities Act and will comply with said
10 Act..

11 2. Within ten days after entry of this Order, PROSPER shall pay to the Treasurer State of
12 Maine, the sum of \$ 1517.00 such funds to be deposited into the Maine Office of Securities
13 Investor Education and Training Fund, pursuant to 32 M.R.S.A. § 16601 (7).

14 3. In the event another state securities regulator determines not to accept PROSPER'S state
15 settlement offer, the total amount of the State of Maine payment shall not be affected, and shall
16 remain at \$1,517.00.

17 4. This Order concludes the investigation by the Maine Office of Securities and any other
18 action that the Maine Office of Securities could commence under applicable Maine law on behalf of
19 the State of Maine as it relates to PROSPER, up to and including any activity through November 24,
20 2008; provided however, that excluded from and not covered by paragraph 1 in this section are any
21 claims by the Maine Office of Securities arising from or relating to the "Order" provisions
22 contained herein.

23 5. This Order is entered into solely for the purpose of resolving the referenced multistate
24 investigation, and is not intended to be used for any other purpose, and its findings and conclusions
25 shall not constitute admissions on the part of PROSPER for any purpose.

26 6. If payment is not made by PROSPER, or if PROSPER defaults in any of its obligations set

1 forth in this Order, the Securities Administrator may vacate this Order, at her sole discretion, upon
2 10 days notice to PROSPER and without opportunity for administrative hearing, and commence
3 separate action.

4 7. For any person or entity not a party to this Order, this Order does not limit or create any
5 private rights or remedies against PROSPER, does not limit or create liability of PROSPER, or limit
6 or create defenses of PROSPER to any claims.

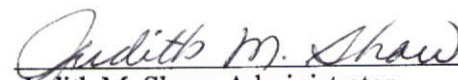
7 8. Nothing herein shall preclude the State of Maine, its departments, agencies, boards,
8 commissions, authorities, political subdivisions and corporations, other than the Office of Securities
9 and only to the extent set forth in paragraph 1 in this section, (collectively, "State Entities") and the
10 officers, agents or employees of State Entities from asserting any claims, causes of action, or
11 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
12 injunctive relief against PROSPER in connection with unregistered securities sales.

13 9. This Order and any dispute related thereto shall be construed and enforced in accordance
14 with, and governed by, the laws of the State of Maine without regard to any choice of law
15 principles.

16 10. This Order shall be binding upon PROSPER and its successors and assigns as well as to
17 successors and assigns of relevant affiliates with respect to all conduct subject to the provisions
18 above and all future obligations, responsibilities, undertakings, commitments, limitations,
19 restrictions, events, and conditions.

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21 Dated this 12th day of June, 2009.

22 BY ORDER OF:

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24 
25 Judith M. Shaw, Administrator
26 State of Maine
Office of Securities

**CORPORATE CONSENT TO ENTRY OF ORDER FOR
PROSPER MARKETPLACE, INC.**

I, Chris Larsen, state that I am an officer of Prosper Marketplace, Inc. and I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that Prosper Marketplace, Inc. voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter; that Prosper Marketplace, Inc. understands that the Maine Office of Securities reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Maine Uniform Securities Act by Prosper Marketplace Inc.; and that Prosper Marketplace, Inc. will fully comply with the terms and conditions stated herein. Prosper Marketplace, Inc. agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that it shall pay pursuant to this Order.

Prosper Marketplace Inc. understands that this order is a public record document.

Prosper Marketplace Inc. has been represented by counsel of its choosing in connection with the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.

Dated this 3rd day of June, 2009.

Prosper Marketplace, Inc.

By: 

Title: President & CEO

1 SUBSCRIBED AND SWORN TO before me this 3rd day of June, 2009

2 *Michelle Donnelly*
3 Notary Public

4 My Commission expires: February 6, 2012



7 Order Approved as to Form:

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9 Randall J. Fons, Partner
10 Morrison & Foerster LLP

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